UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
	Case No. 22-11238 (LSS)
WINC, INC., *et al.*,	
	(Jointly Administered)
	Courtroom No. 2
	824 Market Street
Debtors.	Wilmington, Delaware 19801
	Tuesday, January 17, 2023
. . . .	3:30 p.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtors:	Matthew Lunn, Esquire Allison Mielke, Esquire YOUNG CONAWAY STARGATT & TAYLOR LLP Rodney Square 1000 North King Street Wilmington, Delaware 19801

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INDEX

(Proceedings commence at 3:35 p.m.)

MS. MIELKE: May I begin, Your Honor?

THE COURT: Yes.

MS. MIELKE: First on the agenda is the debtor’s motion to approve the sale of substantially all of their assets to Project Crush Acquisition Company LLC or Co., LLC, excuse me. At the outset I will note that after significant protracted negotiations we’re pleased to report that the debtors are proceeding on what we thought was an consensual basis. There may be one outstanding issue, but we are working on some language right now to try to address it. So hopefully by the end of the hearing we will have a fully consensual hearing for you today.

We did resolve the committee’s objection through a settlement of issues. Those were negotiated by the stalking horse bidder, the debtors and the committee together over the last several days. We also received informal comments from various parties regarding mostly cure and assumption objections. Those have been resolved by filing supplemental cure notices and incorporating language into the sale order.

In support of the motion the debtors filed the declaration of Carol Brault who is the debtor’s chief financial officer and the declaration of Morgan Ley who is with Canaccord Genuity, LCC, the debtor’s investment banker. Both witnesses are here in the Courtroom and available for

cross-examination. I think at this point, Your Honor, we would ask that those be admitted into evidence.

THE COURT: Is there any objection of the entry into evidence of the declaration of Morgan Ley or the declaration of Carol Brault?

(No verbal response)

THE COURT: I hear none. They are both admitted.

(Declarations admitted into evidence)

MS. MIELKE: Thank you.

Your Honor, just a brief recap of the debtors. The debtors operate a direct to consumer and wholesale channel wine business. The business is based out of Los Angeles historically and it has distribution centers in California and in Pennsylvania. The debtors do not own any real property. So the assets that are sought to be transferred consist of personal property contracts, personal property leases, and certain intangibles.

For almost 10 months now the debtors have been pursuing a strategic alternative -- excuse me, a strategic transaction. After that extensive process we are asking the Court today to approve a transaction to the stalking horse bidder which the debtors believe, as reflected in the declarations that we filed, is the best possible avenue to preserve and maximize value in these cases.

As you will recall, the debtors limped into

bankruptcy a couple of months ago with $800,000 in cash and facing a looming loan payment deadline. The parties worked together to avoid a contested cash collateral fight at the beginning and they agreed on terms to obtain debtor-in-possession financing. That financing was used to pay administrative claims to support the sale process. The debtors and Canaccord immediately commenced a post-petition marketing process as soon as the cases were filed.

The Court approved bid procedures on December 22nd and approved Project Crush Acquisition as the stalking horse bidder. Bids were due on January 9th. No qualified bids were received despite the debtors best efforts and the debtors canceled the auction and proceeding today with approval of the stalking horse bid.

We did receive substantial feedback, which we have indicated in the declaration of Morgan Ley, from several bidders that indicated that they believed that the consideration that we were receiving in the stalking horse bid was full value for the assets. So we did have some interest, but no bidder was willing to exceed the value that we were already getting from the stalking horse bid.

I will briefly go over some of the terms of the APA. As I mentioned, the sale is for a sale of substantially all of the debtor’s assets. That includes inventory, accounts receivable, assumption and assignment of certain

contracts, etc. The transferred assets also include the transfer of specified causes of action. Those include some avoidance actions against certain vendors and a specified officer who is accepting employment with the buyer.

The consideration for this sale is $11 million in cash and that, in addition to assumption of certain liabilities, the debtors have estimated in the amount of approximately $18 to $28 million. Those liabilities consist of cure costs for assumed contracts, some trade payables and then predominately the gift card and customer obligations.

Of that purchase consideration the stalking horse bidder is going to credit bid approximately $4.1 million and that will consist of the DIP draw plus interest and fees. Then there is a very small amount of that credit bid that will be on account of a settlement that the committee and the debtors have reached which I will go over shortly.

I think I mentioned it, but in some the value that the debtors have estimated the sale to bring in is between $29 and $30 million. The range reflects some value associated on the debtor’s books and records with breakage for gift cards and prepaid credits.

Due to the necessity for the buyer to obtain liquor licenses going forward the debtors and the stalking horse bidder have entered into a transition services agreement where essentially BWSC will continue to operate the

business and the purchaser will be responsible for the costs associated with the operation of the business. The buyer will be taking on certain or most of, I will say certain of the debtor's employees and will be providing the staffing necessary to perform those duties.

The costs will be funded from transition proceeds through a fee invoicing process. And the fees of the Chapter 11 case are contemplated to be paid by the purchaser to the extent that they are attributable to the TSA. So there are some costs that the Chapter 11 cases will bear for costs that are a straight-forward Chapter 11 what you would have to pay anyway. But to the extent there is a hook to the TSA then the purchaser will satisfy those.

As I indicated, there is a settlement with the committee in this case. It was protracted and hard fought. The terms of the settlement are attached to the sale order as a term sheet which I have provided to you.

Just a brief overview, the committee is in support of the sale. The debtors and the committee are going to be working together to file a plan. Going forward we have set forth some milestones which we hope we can achieve to get a plan on file. There is also an agreement to resolve the committee's critical vendor objection. That has been resolved.

The debtors will be making one of those payments

and then there is a mechanism where the debtors and the buyer have agreed, and the committee have agreed, not to make the remaining of those payments. And then they are going to split the remaining cash proceeds left at the estates after the sale proceeds waterfall, 50/50; so cash on hand at the end of the sale proceeds waterfall.

So --

THE COURT: With who?

MS. MIELKE: The buyer. So it will be like a payment kind of in lieu of the, sort of, application of critical vendor payments from the DIP. So that payment will go back to the buyer which the buyer will be credit bidding.

There are some additional -- in order to resolve an objection filed by several lien claimants the parties have agreed that the purchaser will be assuming responsibility to pay those claims going forward. Those are listed with specificity in the term sheet.

Those are the highlights from the term sheet, Your Honor. As I mentioned, we have resolved the committee’s objection with respect to critical vendor issues.

I think that that leaves the, what I will call, objection of the ad hoc grape growers. I am hopeful that we are going to be able to come to some language that will provide those grape growers comfort.

As we -- we can go through the blackline of the

sale order if Your Honor would like, but we have made it clear in the sale order that -- or we have and we will if we need to revise that language that the liens of those claimants will be riding through. So the sale will not be free and clear of those liens.

Then I think, I don't know, if I could just take a moment to check to see if the language that we have discussed with that particular set of lien claimants, if we have been able to arrive at a resolution on that.

(Pause)

MS. MIELKE: So my understanding is that there is some language that is still being proposed and agreed on. So perhaps we can get agreement on that by the time the hearing is over and if not we can address where we need to move with that.

Your Honor, that is it for the highlights. I'm happy to walk through the blackline of the sale order with you. I know you haven't had any really time to see the revisions. So I don't know what would be helpful for you, if you would like us to just go through it or if you need a moment.

THE COURT: I am still trying to figure out what the 50/50 split is. Can you take baby steps on that?

MS. MIELKE: Sure. So the debtors will calculate a waterfall at closing. It's identified here under the sale

proceeds utilization on page 2 of the term sheet. We have agreed to what the amount of the DIP claim will be, that will be credit bid. Then the other sale proceeds from that waterfall will be the payment of the Bank of California secured claim which I think at this point we have stipulated to.

THE COURT: Okay.

MS. MIELKE: Administrative claims of the case including professional fees. That will result in a net sale of proceeds. Then the debtors and the buyer have agreed that those net sale proceeds will be split 50/50. It is -- I don’t know what the call it, it was an arrangement as a way to allocate proceeds, DIP funds, that kind of thing to sort of arrange payment of -- to satisfy the payment of those potential claims that would have been made as a result of critical vendor payments. Then we have agreed that the buyer will be credit bidding that amount.

THE COURT: Is that because the -- okay, so certainly critical vendor payments are not being made that I approved or permitted. So I guess I am not clear why any net sale proceeds are being split and why the estate isn’t receiving 100 percent of the net sale proceeds after payment of the DIP, and the secured claim, and any other claims.

MS. MIELKE: Well the thought is, Your Honor, that DIP proceeds would have been used to have paid those real

dollars. So that would have -- essentially it's just an -- I mean it would have been paid anyway from the debtor estates, but we have agreed not to pay it from a debtor estate and instead split the proceeds 50/50.

So I think it actually potentially provides some upside to the estate to the extent that, you know, claims are satisfied, come in lower or there is some upside there.

THE COURT: So are those critical vendor claims being picked up by way of cure claims or are they being left as general unsecured claims?

MS. MIELKE: They are what they are, those claims. So assuming that they were -- so to be clear, those vendor claims were both prepetition and just inventory payments like regular inventory payments. I think those payments will be satisfied. If the buyer decides going forward that they are going to be doing business with those vendors then they can pay them if they would like, but right now they're just general unsecured claims in the case.

THE COURT: I'm still not sure I understand this, but if that is the deal the committee struck it's the deal they struck. I'm not sure I understand it.

MR. KESSELMAN: Your Honor, Justin Kesselman for the official committee of unsecured creditors.

I can walk through some of what the committee's viewpoint is on the settlement. The committee viewed, first

and foremost, that saving $996,000 in estate funds for being used to pay largely what we view is unsecured claims and keeping an amount in the estate, you know, to pay either administrative claims or to be more, you know, equitably distributed among unsecured creditors generally made more sense for the estate

So preserving close to a million dollars in payments from going out of the estate we had to make some deal with the buyer and with the debtors in order to ensure that that million dollars did not go out of the estate because in our view, by sending out the million dollars out of the estate, the buyer was shifting a cure cost onto the estate. And if the buyer wanted to assume those contracts then our view is that the buyer should pay the cure and take that on.

So through a resolution through this, not only the cure cost, but the buyer picking up the liens. I think it’s approximately $2 million in liens. What we were trying to do is ensure, through this arrangement, that there actually were net sale proceeds for the estate at the end of the sale because when you add it all up without the deal and what the estate was headed for in the view of the committee you had $11 million in sale proceeds, potentially $5 million on the DIP, more than $3 and a half million on the Banc of California’s claim, $2 million to Canaccord, and $2 million

in lien claims that were potentially payable from the proceeds, all of which is substantially in excess of $11 million. So all of that together would have more than swallowed up all of the proceeds. It would have left the estate unable to fund the full scope of administrative costs and certain with no distribution to unsecured creditors.

Instead, under this arrangement the lien claims are paid for, the estate cash is preserved and not sent out on the kind of contracts that would be potentially assumed by the buyer and there will be net sale proceeds based on the projections that we received from the debtor’s financial advisor in order to fund the estate through, to confirm a plan, and provide for an opportunity for unsecured creditors to be paid.

That is our view of how the deal accomplishes that.

THE COURT: Okay. Thank you.

MR. KESSELMAN: Thank you, Your Honor.

MS. MIELKE: Your Honor, there is one clarification. We stipulated to the amount of the DIP lender credit bid on the sale closing row of the chart, on page 1 of the settlement termsheet, but it did not make its way all the way down to the sale proceeds utilization sale. So that just needs to be updated to reflect the number $4,165,963.49.

THE COURT: Okay.

MS. MIELKE: Your Honor, I don't want to drone on and on if it's unhelpful. Should we go through the order or do you need some time to review it? How can we help you?

THE COURT: You can go through the order.

MS. MIELKE: Your Honor --

MR. LITVAK: Your Honor, I apologize. At the appropriate time I have some comments to the termsheet so I just wanted to put a pin in that whenever Your Honor is ready.

THE COURT: Why don't you go ahead, Mr. Litvak.

MR. LITVAK: Thank you, Your Honor. Thank you for allowing me to appear via zoom. Mat Litvak, Pachulski Stang Ziehl & Jones, on behalf of the Banc of California.

Your Honor, I expressed these comments to debtor's counsel in emails, but the issue that we have is there is a specific cap on the amount. You can see that on page 1 of the termsheet in that third box. There is a specific cap of $3,558,646 and that the payment to the bank shall not exceed that, plus reasonable attorney fees, and interest accruing for the period beginning January 4th through the closing date.

Your Honor, that number nets out two things that I wanted to clarify on the record. First, there is a letter of credit that is outstanding of $100,000. I know the debtors are trying to cancel it, but we have not received, from the

bank’s perspective, confirmation from the beneficiary that that LC has, in fact, been canceled. So we would insist upon a reserve for that letter of credit of $103,000, $3,000 being for a little cushion in case there are any fees.

We don’t need to be paid that amount, Your Honor. I am just saying that that amount needs to be reserved by the estate because it would be payable to the bank if the letter of credit is ever called upon and that is not included in the $3.558 million. So that is our first issue.

THE COURT: Okay.

MR. LITVAK: Would you like me to go through all of the issues, Your Honor?

THE COURT: Yes.

MR. LITVAK: The second issue, Your Honor, is that this number $3.558 million deducts default rate interests that the bank had been charging the debtor from the petition date through January 4th, it’s about $16,000. The bank is agreeable to waiving all the default rate interest, but that is subject to the committee agreeing that its challenge rights are also waived.

Under the final DIP order the challenge deadline is February 20th and in my discussions with the committee I believe that they are willing to do that. So if they are then this proviso that says subject to the committee’s challenge period deadline of February 20th would need to come out and

the committee -- in pro rata the language should say that the committee waives its challenge. If they are not willing to do that and this remains subject to the committee's challenge period then the claim amount needs to be increased. So that is the second point that I have.

The third point, Your Honor, is that this number of $3.558 million does not include my firm's fees either before or after January 4th. We would estimate that those fees will not exceed $175,000. They may be only around $150, but I don't know yet because we have to get to closing first. But that is another item that needs to be addressed or the language needs to be revised to reflect that.

Then lastly, Your Honor, at the end of that box, but at the top of page 2 it says that at sale closing all liens of BOC, Banc of California, on excluded assets shall be deemed released and discharged. That would be fine, but it has to be subject to us actually getting the money, getting full payment.

Those are my four comments, Your Honor, to the termsheet.

THE COURT: Thank you.

MR. LITVAK: Thank you.

THE COURT: Let me hear a response.

MR. KESSELMAN: Your Honor, from the committee's perspective Mr. Litvak is correct. That was a discussion

held right before the hearing. So the committee is waiving its challenge deadline.

THE COURT: Okay.

MR. KESSELMAN: That language will be stricken.

THE COURT: Okay.

MR. KESSELMAN: As to the letter of credit my understanding is it’s been canceled, but debtor’s counsel can confirm what the status of that is.

The issue about the secured lenders fees I believe those have been reserved in escrow. I don’t know the exact amount that is in the escrow, but, you know, our intention is to ensure that their reasonable fees are paid. So if there has to be an amendment to the language to provide for that we can make sure that happens, but that’s all I have.

THE COURT: Okay. Does the debtor disagree with that?

MS. MIELKE: Your Honor, we might just need one moment. Some of this is new to me, at least.

MR. KESSELMAN: Yeah, we have no verification of the number. That is the first time, I think, I’ve heard it.

MR. WALKER: Good afternoon, Your Honor. Eric Walker of Cooley on behalf of the successful bidder and the DIP lender.

One point of clarification on the $103,000 reserve that is outstanding line of credit. We understand it’s been

canceled or it's in the process of being canceled. We understand Banc of California's position; they want to reserve in the event that something happens between now and when it actually gets canceled.

As Your Honor knows and as Ms. Mielke described for the Court, there is a process to calculate net sale proceeds that will then augment our credit bid as part of the sale and we just want to make clear on the record that if that $103,000 reserve is not drawn upon for the letter of credit that that is not included in the calculation of net sale proceeds.

THE COURT: Okay. So the purchaser doesn't get a 50 percent credit on the $103,000?

MR. WALKER: We would be because the $103,000 would not be used. The reserve would be released, right, and, therefore, it wouldn't be deducted as part of the equation to determine what the net sale proceeds is. Does that make sense?

THE COURT: Okay.

MR. WALKER: I see shaking heads from the debtors and the committee.

THE COURT: So there's two different points. The Banc of California wants to ensure that the $103,000 is there in case the letter of credit is drawn. If you all want to make sure that if, in fact, it's been canceled without being

drawn that the purchaser --

MR. WALKER: The reserve goes away.

THE COURT: Okay. Right. So the purchaser gets its share of that.

MR. WALKER: 50 percent.

THE COURT: Okay.

MR. WALKER: Thank you, Your Honor.

MS. MIELKE: I think the only outstanding point on that, I think, after conference with the committee is that -- I don't think I have the number in front of me anymore, but there is a $103,000 escrow for prepetition lender fees. I think that the committee -- I don't think anybody is stipulating to what the prepetition fees are and it's subject to reasonableness, but there is -- you know, its escrowed currently for $100,000.

Then I think -- is there one other issue? That might have been it.

THE COURT: I don't know if that effects whatever calculation that's going on, but Mr. Litvak says it's at $175 or it could be at $175.

MR. LITVAK: Yes, Your Honor. It's not just prepetition legal fees. There was a separate component in our pay-off statement which is already included in the $3.558 million which was about $15,000 for prepetition legal fees. That was a different law firm. And then our fees were

budgeted at $100,000 for purposes of the final DIP order, but I think we're going to come in over that. As I mentioned, I think it's going to be no more than $175, probably closer to $150.

So we just need to tinker with the language in the termsheet to make it clear that it's not just post-January 4th fees, but it's all of our post-petition legal fees.

Then the last issue was just clarifying that language about waiver of the bank's liens in the excluded assets that that is subject to full and final payment of the bank. Once that is done, and, yes, it should occur concurrent with closing, then we're good and, obviously, will release the liens.

THE COURT: Right. I assume that is one issue.

MS. MIELKE: I think we just have some revisions to the termsheet, Your Honor.

THE COURT: So there will be changes made in --

MR. LITVAK: Thank you.

THE COURT: -- working with Mr. Litvak.

Anyone else have any questions, comments, concerns about the termsheet in its current iteration?

(No verbal response)

THE COURT: Okay. Let me hear from anyone who filed an objection that would like to speak. Ms. Mersky.

THE COURT: Okay. Let me hear from anyone who

filed an objection that would like to speak.

Ms. Mersky?

MS. MERSKY: Good afternoon, Your Honor. Rachel Mersky. It's nice to see you in person again.

THE COURT: It's good to see you.

MS. MERSKY: On behalf of eight individual grape growers, which are identified by entries of appearance, we've been working very, very hard with the debtors since January 6th to try and resolve all the issues and the debtors have been extremely responsive and it's a difficult moving target, as documents change. I believe we are primarily there. The big issue on behalf of the grape growers was that the -- there would be no attempt to have a sale, free and clear, of the California Food and Agriculture Code producer's lien, which is a lien similar to PACA, but packs a lot more strength, including criminal liability if grapes are sold without being paid for and processing.

We have -- additional language has been added to the order and right now, we're working with the buyers on one additional term, as it relates. I think it'll be part of the transition services agreement or the order.

I'd also like to point out at paragraph 8 of the proposed order, language was added and on the redline, which took out the language -- it was liabilities and permitted encumbrances and it had the language "comma if any." "If

any" has been struck.

We would like to have added, and I haven't specifically discussed this, but we have discussed this, "including, but not limited to the California Food and Agriculture Code producer's lien."

I don't think we talked about using state law as a language, but I think that that's more specific and it'll clarify that it's clear that that is one of the permitted liens that is covered. We're still working with the lender on one additional term, which I hope we'll have shortly.

But the -- we've worked and we've agreed on all the amounts of the liens. It is with the term sheet, disputed payment, and lien claim settlement. There was language added that addressed each of the eight grape growers that we represent and, as I said, there's just one additional term, which we're hoping to clarify. But I think with that, assuming we get that final term, that we worked diligently and we do appreciate the efforts of the debtors and now of the purchasers, to try and work through this.

THE COURT: Okay.

MS. MERSKY: It's a very, very big issue in California and the California Agricultural Act, which protects edible flowers, which I learned in the FTD case, as well as most agriculture, and very, very heavily protects grape growers, is an Act which, when we have grape cases, is

a little more difficult and different.

Thank you very much, Your Honor.

THE COURT: It sounds like the Oklahoma oil and gas that follows you to the pump and, you know, can probably get to the consumer, who's pumped it.

MS. MERSKY: But in Oklahoma, Texas, and one other state, you can't have criminal liability for those acts. There's actual criminal liability in California.

Thank you, Your Honor.

THE COURT: Thank you.

MR. KESSELMAN: Your Honor, Justin Kesselman from the Committee. Just -- we haven't seen the language that's being proposed yet, so, of course, our interest is in preserving the terms of our term sheet, but we will consult with the debtors and the other parties to look at the proposed language.

THE COURT: Okay.

MR. KESSELMAN: Thank you.

THE COURT: Mr. Yurkewicz?

MR. YURKEWICZ: Good afternoon, Your Honor. Michael Yurkewicz, Klehr Harrison Harvey Branzburg, on behalf of VV1515, LLC. We are the landlord at one of the distribution centers. We filed an objection to the assumption of the contract.

We were able to enter into a lease amendment with

the purchaser that resolves our objection. With that, I thank the purchaser for working with us and we no longer have any objection to the sale.

THE COURT: Thank you.

MR. YURKEWICZ: Thank you.

THE COURT: Any other objectors?

MR. BIFFERATO: Your Honor, Connor Bifferato, on behalf of Atticus Publishing, LLC. I apologize for my appearance. I was only retained by audio only, but I was only retained within the last hour. My co-counsel Laura Taveras is with me here, as well, and we have moved for admission.

It's a very minor issue. The latest iteration of the APA references cure amounts to include both, pre-petition and post-petition amounts. As I understand it, the last iteration only referenced pre-petition cure and because the amounts listed for our client Atticus Publishing, LLC, are not correct with respect to post-petition amounts, we obviously just wanted to make sure that cure rights are preserved, with regard to any assumption and assignment.

THE COURT: Okay. So talk to me about cure amounts.

MS. MIELKE: With respect to Atticus, Your Honor, or generally?

THE COURT: Generally and then Atticus.

MS. MIELKE: We've filed a cure notice. We've put cures out. We've worked with lots of people in the last two weeks. An objection deadline has come and gone. This is the only one that I've heard about so far.

So, I think the debtors' position would be we've given the world notice. Everybody's had an opportunity to object.

With respect to, I think -- I can't remember exactly -- I think it's Atticus Publishing, LLC, I've been in contact with them since day one of the case, so I'm a little surprised to hear about this now. But I don't -- I think with respect to Atticus, I don't think there's any issue, you know, reserving rights on the post-petition amount that may have accrued since we filed the cure notice.

MR. BIFFERATO: That would take care of our issue, Your Honor.

MS. MIELKE: And then, just to clarify, it sounds like the APA, the definition of cure costs includes post-petition accruals under those contracts.

THE COURT: Okay. And I'm not making that determination today.

MS. MIELKE: Correct.

THE COURT: Okay. Mr. Bifferato, does that satisfy your concern?

MR. BIFFERATO: It does, Your Honor. Thank you.

THE COURT: Okay. Anyone else?

(No verbal response)

THE COURT: Okay. Let's flip through the order as it stands now. I understand there's going to have to be some changes, but let's flip through it as it stands now and let's walk me through any major change.

MS. MIELKE: There aren't too many major changes, Your Honor, but I'll note some substantive changes.

THE COURT: Uh-huh.

MS. MIELKE: I'll just note on page 6, the end of paragraph (h), that the stalking horse bid and sort of the documents referenced there are modified by the terms of the settlement term sheet. We've included the TSA, as well as the accompanying MSA, as documents -- exhibits to the order, as well as the settlement term sheet itself, and that gets us through paragraph (j). There's been a defined term change, so that's a lot of this markup. Paragraph (d)(d) just clarifies that the stalking horse bidder has agreed to assume the cure costs related to the assumed lien contracts.

THE COURT: Where is that?

MS. MIELKE: It's on page 13, it's paragraph (d)(d). "D," as in dog.

Again, just a couple of provisions that modify. To the extent the term sheet is applicable, it just references to the extent modified by the settlement term

sheet.

Page 19 just clarifies that the purchasers shall pay the associated cure costs, associated with the assumed lien contracts.

And then we'll obviously revise, as has already been indicated, paragraph 8 to include a reference to liens from California's state producers law. We'll have to run through that language amongst the parties, but we'll agree on something and include that under certification of counsel.

The (indiscernible) paragraph to the bottom of 8 is to address just a transfer issue. So, under the TSA and the order, the assets are being transferred, but are going to be held in trust, for the benefit of purchaser, for purposes of the licensing. To this paragraph is to address that arrangement and make it clear.

THE COURT: What paragraph is that?

MS. MIELKE: It's paragraph 8; it's the end of 8 on page 20.

THE COURT: Okay. As I recall, there is something in the -- well, there's a fair amount in the sale order about license agreements, but ultimately, there's a recognition that nothing is impairing any government's ability to take a look at the licensing agreements.

MS. MIELKE: I think that's correct.

THE COURT: Okay.

MS. MIELKE: Paragraph 24 references Section 1.2(a) of the purchaser agreement, which provides for the assumption of contracts. There's a timing component in that as a result of the licensing. So contracts associated with licenses will be assumed at the time that the license is obtained and transferred and the assets are transferred -- or excuse me -- the legal title to the assets are transferred.

28 just makes clear that the proceeds are going to pay off the pre-petition secured party.

MR. LUNN: Your Honor, I have a comment on that one.

THE COURT: Okay. What's your comment?

MR. LUNN: That is to the length of reference of the challenge rights, consistent with what we discussed in the term sheet.

THE COURT: That makes sense to me.

MS. MIELKE: I think that's consistent with what Committee represented, but I think, yes, Your Honor, the Committee is shaking their head. We'll do that.

MR. LUNN: Thank you.

MS. MIELKE: So, we'll start that paragraph with capital A, At.

Paragraph 29 is language to address an objection received or an informal response received from Natural Merchants. There was a pre-petition acquisition that the

debtor -- an APA that the debtors entered into with Natural Merchants and there is some earnout liability associated with that and some continuing -- some obligations under that contract.

So, this paragraph is a resolution of the parties' rights, with respect to an escrow amount that is being held and clarifies that the debtors will be rejecting certain of the agreements related to that agreement.

Paragraph -- do you have questions on that, Your Honor?

THE COURT: No.

MS. MIELKE: Okay. Paragraph 30 just addresses Oracle. This is pretty standard language that I think Oracle often includes in an order that just says that any contracts of it -- that its contracts will not be assumed and assigned without its consent.

THE COURT: Uh-huh.

MS. MIELKE: They also often have an issue about the transfer of licenses to third parties. It's just to address that, as well.

Moving on to 31, this language is included to address an objection received by Summerland. Summerland has a lien claim in certain wine. The debtors' contract at the time that the cure notice was filed, the debtors had a contract with Summerland, but it expired on its own terms at

the end of last year. So, this makes clear that the debtor will be making payment on account of that claim through -- and there's a specified amount -- and then makes clear that that agreement is not subject to assumption and assignment.

And I think those are the highlights, Your Honor. If there's anything else, I'm happy to answer questions.

(Pause)

THE COURT: Is there a transition services agreement that's attached to this?

MS. MIELKE: There is. We filed it earlier today and I have copies here if you need it.

(Pause)

MS. MIELKE: May I approach, Your Honor?

THE COURT: You may. Thank you.

Is there an outside time period for the transition services agreement?

MS. MIELKE: Yes, Your Honor. I think it is January 31st, 2024.

THE COURT: Okay. That's a fairly long period.

MS. MIELKE: It is an outside date, Your Honor. I don't believe it's the intent of the parties for it to take that long and, frankly, the buyer should be incentivized for it not to take that long, because they are covering the costs of the Chapter 11 case, as well --

THE COURT: They're picking up all the costs.

MS. MIELKE: -- so, I mean, all costs associated with the TSA. So, there are going to be a couple of very core bankruptcy costs that they're not picking up, but it's expensive, so I can't imagine they're going to want to do it for too long.

THE COURT: Okay.

MR. WALKER: Your Honor, Eric Walker, again, on behalf of the purchaser.

We agree with the sentiment that we're going to get this transition completed as quickly as possible. It's really with the State regulators, who we're in the process of getting our license for. We expect it will take a couple of months. We put that outside date in there just as kind of an outside end date, but we certainly hope to accomplish it within a handful of months.

And with respect to the transition costs, we've made it very clear in the TSA and in the settlement agreement with all the parties that we understand, as the purchaser, we will be paying any administrative costs with respect to the operations of the company during the interim period, and there's a detailed mechanism for us to pay for that, and then any additional administrative costs for the bankruptcy case that would not have been incurred, but for the TSA. And so, that's going to govern the relationship of the parties moving forward. I just wanted to make that clear for the record.

THE COURT: Thank you.

MR. WALKER: Thank you.

THE COURT: Anyone else who wishes to be heard?

MS. MERSKY: Your Honor, Rachel Mersky, again, on behalf of the eight grape growers.

I don't know if this language -- we're working on language, which would -- we hope to have in. And I don't know if it belongs in the TSA or in the settlement agreement. I think it depends upon the buyers in this part, but the rather simple language we've proposed that no product of any assumed lien contract, which is a defined term, will be sold under the TSA without first assuming, assigning, and cure by the buyer; once again, following the fact that the lien attaches and that the product cannot be sold without cure, and we're trying to get an agreement as to that language, but I just wanted to raise that issue now.

THE COURT: Thank you.

MS. MERSKY: Thank you, Your Honor.

THE COURT: It sounds like there's agreement in principle and we're just working on the language.

MS. MERSKY: Your Honor, I don't -- that's language that we're working on. I don't have the authority to represent the buyers or the debtors on that language issue. I think they're still talking to our client.

THE COURT: Do we have a -- we're not in agreement

in principle?

MR. LUNN: Look, I have a suggestion, Your Honor.

THE COURT: Yeah, I just want to make sure we're not leaving today with an open issue that's going to create a problem.

MR. LUNN: A hundred percent agree, and for the record, Matthew Lunn from Young Conaway, on behalf of the debtor. Maybe we do this, we allow them to go to the back of the courtroom for five or so minutes.

We take Canaccord --

THE COURT: You can take Canaccord, that's fine.

MR. LUNN: -- and then we just try to be as efficient as possible, given the late hour.

THE COURT: Yes, you can, certainly.

MR. LUNN: Okay.

THE COURT: And if you need to contact your clients, go ahead. But let's do Canaccord and then we'll see where we are.

MR. LUNN: Right. Your Honor, may I approach with a redline of the form of order for -- with respect to Canaccord?

THE COURT: Right. And, actually, I just want to make sure, is there anything else, in terms of presentation to the Court on the sale motion that you'd like to put on the record before we switch to Canaccord?

MR. LUNN: Do you want to put anything on the record?

MR. KESSELMAN: Your Honor, Justin Kesselman from the Committee.

Other than the comments that, you know, I made previously, I would just like to commend the efforts of the debtor, the buyer, Canaccord, Banc of California, all the parties that negotiated very hard over the past month since the Committee was appointed. The Committee's concerns were real. I outlined those earlier. We were very concerned about the administratively insolvent estate with no recoveries for general unsecured creditors. We were very concerned about certain aspects of the sale and certain causes of action going out of the estate, and we were able to resolve those concerns by finding a commercial solution, as we talked about at the bid procedures hearing and as Your Honor suggested.

So, we appreciate the Court's guidance throughout this short case so far, chambers, and all the professionals that have been involved to reach a result that the Committee believes is commercially reasonable, but a good exercise of the debtors' business judgment, and creates an opportunity for unsecured creditors to achieve a recovery.

THE COURT: Mr. Walker?

MR. WALKER: Possibly.

MS. MIELKE: I don't think so, Your Honor. I think it's, you know, we've set forth the terms. We believe it's in the debtors -- in the best interests of the estates for the sale to be approved and we think this is the sale that we can get under the circumstances and that we've run a thorough process, so we'd ask that Your Honor approve it.

THE COURT: Thank you.

Okay. Now we'll turn to Canaccord. Mr. Lunn?

MR. LUNN: Thank you, Your Honor. Matthew Lunn from Young Conaway, again, for the record.

So, to say that the discussions, with respect to the Canaccord fee, you know, is -- was long and protracted, it was. And if I may approach, Your Honor, there's been a settlement, with respect to the underlying transaction fee and the compensation.

THE COURT: Okay.

MR. LUNN: Your Honor, I don't believe that any of the objections really went to the expertise or the qualifications, the disinterestedness of Canaccord at all. I think what Your Honor has heard through the testimony from Mr. Ley, as well as from others, that Canaccord has run a process that yielded value to the debtors' estates, the value-maximizing transaction that was able to ultimately get the business sold as a going-concern.

So, the question ultimately came down to, what was

the reasonableness of their fee? And with that, Your Honor, multiple discussions. There were multiple objections that were filed -- I think Your Honor saw that -- by the U.S. Trustee, by the buyer as a DIP lender, by the Committee, as well as by Banc of California.

What I handed to Your Honor is a settlement that effectively sets forth what the proposed fee will be for Canaccord, and I'll direct Your Honor's attention to paragraph 2 of the order.

THE COURT: Uh-huh.

MR. LUNN: It results -- the agreed-upon resolution -- actually, I'll also say that the comments in this order also reflect comments received from Ms. Leamy, generally speaking. So, the order, as I understand it, has been agreed to by all the parties.

In essence, the economic resolution of the fee, Your Honor, is the payment of $975,000 upon closing of the sale to Project Crush Acquisition, which is the (indiscernible) before Your Honor, obviously. There's one additional monthly fee of a hundred thousand dollars and that's the amount that was included in the engagement letter. Eighty percent of that is credited against the $975,000 to pay a closing. And then there's an additional expense reimbursement of $499,000.99.

Canaccord is still required to file final fee

applications, interim and final, I assume would be one and final and done.

THE COURT: Uh-huh.

MR. LUNN: And with that, Your Honor, that does set forth, otherwise, the resolution.

Counsel for Canaccord is here, Mr. Brian Lennon, from Willkie Farr & Gallagher, and Your Honor obviously know that Mr. Ley, as well as his colleagues, Ms. Brault and Mr. Hurley, are also in the courtroom.

Does Your Honor have any questions, with respect to the settlement or disinterested or the declarations or anything of the like?

THE COURT: No, I don't.

Let me hear from anyone else who would like to be heard.

MR. KESSELMAN: Thank you, Your Honor. Justin Kesselman for the Committee.

I just wanted to, again, put on the record, our appreciation of everyone's hard work to reach a resolution. The Committee does withdraw its objection and the resolution that's reflected in the revised terms of engagement reflects the Committee's settlement. The Committee will not object to a final fee application by Canaccord, so long as it's in accordance with the settlement reflected in the revised retention. And the Committee supports payment to Canaccord,

consistent with the terms of the settlement and revised retention agreement.

THE COURT: Thank you.

MR. KESSELMAN: Thank you, Your Honor.

THE COURT: Ms. Leamy?

MS. LEAMY: Good afternoon. Jane Leamy for the U.S. Trustee. I just want to confirm that the revised order resolves the U.S. Trustee's objection, as well.

THE COURT: Thank you.

MS. LEAMY: Thank you.

MR. LITVAK: Your Honor, if I may, on behalf of the bank?

THE COURT: Mr. Litvak?

MR. LITVAK: Your Honor, the revisions to the order resolve the bank's objection, as well. Thank you very much. And also the fact that we expect to be paid in full, I think, resolves it, as well.

(Laughter)

THE COURT: You suspect so. Thank you.

And Mr. Lunn, remind me, the monthly fee of 100,000, the first three months were not credited. It was only after that, right? So, this 80 percent of this hundred thousand is a concession, correct?

MR. LUNN: It is a concession; yes, Your Honor.

THE COURT: Okay. Anyone else?

(No verbal response)

THE COURT: I read the application. I read the objections. I do not have any concern about disinterestedness and I think the resolution is an appropriate one under the circumstances, and I appreciate that that was able to be worked out with Canaccord, recognizing the ultimate results and taking a look at an appropriate, a more appropriate fee. So, I will approve this.

MR. LUNN: Thank you, Your Honor.

I don't believe the order has been uploaded, but we will upload it as soon as we get back to the office.

THE COURT: Okay.

MR. LUNN: I believe we're still missing some people, so --

THE COURT: So, let's take 10 minutes and let's see if that can get resolved and you'll let me know.

MR. LUNN: Will do. Thank you, Your Honor.

THE COURT: Okay. We're in recess.

(Recess taken at 4:33 p.m.)

(Proceedings resumed at 4:50 p.m.)

THE COURT: Mr. Lunn?

MR. LUNN: Thank you, Your Honor.

I'm pleased to report that language has been agreed to. This language is going to find its way into the

TSA, which we will work on revising. I think we'll be submitting all of this under COC at some point, after everyone's had a chance to look at it. Given the hour, probably first thing in the morning.

But the agreed-upon language that's going to be added into the TSA is that "no product of any assumed lien contracts," and that's a defined term in the settlement agreement, "will be sold by the debtors or the purchasers, without first complying with the California Food and Agriculture Code producer lien with respect to such product."

THE COURT: Okay.

MR. LUNN: And with that, I believe we are resolved. I see them shaking their heads, so --

THE COURT: Okay. With that resolution, then, I am prepared to approve the sale, which at this point, is -- there are no objections to the sale that remain unresolved.

The declarations that were put in evidence, the declaration of Ms. Brault, the declaration of Mr. Ley are sufficient to satisfy the evidentiary support for the sale of this debtor, as related. And in the declarations, the debtor started this process pre-petition and continuing the process post-petition, and the only prospective purchaser that came forward and entered into an agreement is the stalking horse bidder. The stalking horse bidder, though, he was a founder of the company many years ago, is not an insider and there is

no evidence of any collusion or any other inappropriate behavior that would taint the process here.

These assets were marketed and while they did not draw another prospective purchaser, a process was followed in order to obtain a highest-and-best offer.

The need for the sale to go forward outside of a plan of reorganization is apparent from the debtors' liquidity position coming into the bankruptcy and with a pre-petition loan that was due, and as I recall, it had been extended prior to bankruptcy, at least once.

So, the process is fair. The sale price is the highest and best. All of the objections have been resolved and I will also make a good faith finding for the purchaser.

And I think that should be sufficient on this uncontested record to approve the sale. I will look forward to receiving a revised form of order that's been circulated and approved by all parties with a redline that shows me the changes. I didn't have an opportunity to review the transition services agreement, but it has been represented to the Court by both, the debtors and the purchaser, that the purchaser is picking up the cost of the TSA itself and is picking up the costs of the bankruptcy, to the extent that the TSA is the cause of any additional administrative costs of the bankruptcy case.

So, I believe that should be sufficient. Are

there any questions?

(No verbal response)

THE COURT: Okay. Thank you very much, counsel.

COUNSEL: Thank you, Your Honor.

THE COURT: We're adjourned.

(Proceedings concluded at 4:55 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling January 18, 2023

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski January 18, 2023

Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable